

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TRAVELERS CASUALTY AND SURETY COMPANY as
Administrator for RELIANCE INSURANCE COMPANY,

Plaintiff,

VS.

DORMITORY AUTHORITY – STATE OF NEW YORK,
TDX CONSTRUCTION CORP. and KOHN PEDERSEN
FOX ASSOCIATES, P.C.,

Defendants.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK
AND TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

VS.

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

TRATAROS CONSTRUCTION, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs

VS.

CAROLINA CASUALTY INSURANCE COMPANY; BARTEC :
INDUSTRIES, INC.; DAYTON SUPERIOR SPECIALTY :
CHEMICAL CORP. a/k/a DAYTON SUPERIOR CORPORATION: :
SPECIALTY CONSTRUCTION BRANDS, INC. t/a TEC; :
KEMPER CASUALTY INSURANCE COMPANY d/b/a KEMPER: :
INSURANCE COMPANY; GREAT AMERICAN INSURANCE :
COMPANY; NATIONAL UNION FIRE INSURANCE :
COMPANY OF PITTSBURGH, PA; UNITED STATES FIRE :
INSURANCE COMPANY; ALLIED WORLD ASSURANCE :
COMPANY (U.S.) INC. f/k/a COMMERCIAL UNDERWRITERS :

07-CV-6915 (DLC)
DECLARATION OF
MICHAEL S. MILLER

INSURANCE COMPANY; ZURICH AMERICAN INSURANCE' :
COMPANY d/b/a ZURICH INSURANCE COMPANY; OHIO :
CASUALTY INSURANCE COMPANY d/b/a OHIO CASUALTY :
GROUP; HARLEYSVILLE MUTUAL INSURANCE COMPANY :
(a/k/a HARLEYSVILLE INSURANCE COMPANY); JOHN DOES :
1-20 and XYZ CORPS. 1-20, :
: :
Fourth-Party Defendants. :

I, Michael S. Miller, declare as follows:

1. I am a Partner with the law firm of Tompkins, McGuire, Wachenfeld & Barry, LLP, attorneys for Fourth-Party Defendant, Lumbermens Mutual Casualty Company ("Lumbermens") (improperly sued as Kemper Casualty Insurance Company d/b/a/ Kemper Insurance Company). I submit this declaration in support of Lumbermens' Motion for Summary Judgment, pursuant to Fed. R. Civ. P. 56 and Local R. 56.1.

2. A true and exact copy of a September 18, 1998 Subcontract Agreement between Trataros Construction, Inc., ("Trataros") and G.M. Crocetti, Inc. ("Crocetti"), is attached as Exhibit "A".

3. A true and exact copy of a certificate of insurance for Lumbermens policy number 4LS 001759-00, which identifies the insurer, the policy and the insurance broker, is attached as Exhibit "B."

4. A true and exact copy of a June 4, 2001 facsimile from Athena at Trataros to Ray Tofoli and Donna Molina at Crocetti is attached as Exhibit "C."

5. A true and exact copy of a June 5, 2001 facsimile from The Allied Group of Companies to Athena at Trataros is attached as Exhibit "D."

6. A true and exact copy of a February 28, 2001 letter from TDX Construction Corporation ("TDX") to Trataros is attached as Exhibit "E."

7. A true and exact copy of a March 7, 2003 letter from TDX to Trataros, including an enclosed report prepared by Testwell Laboratories, Inc., is attached as Exhibit "F."

8. A true and exact copy of a June 17, 2003 letter from TDX to DASNY is attached as Exhibit "G."

9. A true and exact copy of an August 28, 2003 letter from TDX to Trataros, including an enclosed Terrazzo Site Inspection Report, is attached as Exhibit "H."

10. A true and exact copy of the Complaint filed in Travelers v. DASNY, Docket No. 04 Civ. 5101, on June 28, 2004 is attached as Exhibit "I."

11. A true and exact copy of a Third-Party Complaint filed by DASNY in Travelers v. DASNY, Docket No. 04 Civ. 5101, on or about August 4, 2004 is attached as Exhibit "J."

12. A true and exact copy of the Amended Fourth-Party Complaint filed by Trataros in Travelers v. DASNY, Docket No. 04 Civ. 5101, on or about February 17, 2005 is attached as Exhibit "K."

13. A true and exact copy of Lumbermens policy number 4LS 001759-00 is attached as Exhibit "L."

14. A true and exact copy of the March 2, 2005 Affidavit of Service of the Amended Fourth-Party Complaint upon Lumbermens in Travelers v. DASNY, Docket No. 04 Civ. 5101, is attached as Exhibit "M."

15. A true and exact copy of Lumbermens' April 14, 2005 Answer to the Amended Fourth-Party Complaint in Travelers v. DASNY, Docket No. 04 Civ. 5101, is attached as Exhibit "N."

16. A true and exact copy of the Fourth-Party Complaint filed by Trataros on or about November 14, 2007 in Travelers v. DASNY, Docket No. 07 Civ. 6915, is attached as Exhibit "O."

17. A true and exact copy of The Honorable Denise Cote's April 25, 2008 opinion in relation to fourth-party defendant TEC's motion to dismiss in Travelers v. DASNY, Docket No. 07 Civ. 6915 is attached as Exhibit "P."

18. A true and exact copy of The Honorable Denise Cote's June 25, 2008 opinion in relation to fourth-party defendant U.S. Fire Insurance Company's motion to dismiss in Travelers v. DASNY, Docket No. 07 Civ. 6915, is attached as Exhibit "Q."

I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 7th day of August 2008 in New York, New York.

DATED: August 8, 2008

/s/Michael S. Miller

Michael S. Miller

E-Mail: mmiller@tompkinsmcguire.com

TOMPKINS, McGUIRE,

WACHENFELD & BARRY LLP

Attorneys for Fourth-Party Defendant

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("Lumbermens"), improperly sued as

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